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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/576,804

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Donna Hui-Ing Hwang

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EXAMINER

SOROUGH, LAYLA

ART UNIT

PAPER NUMBER

1627

NOTIFICATION DATE

DELIVERY MODE

12/14/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@mwzb.com

Office Action Summary	Application No. 10/576,804	Applicant(s) HWANG ET AL.	
	Examiner LAYLA SOROUGH	Art Unit 1627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The response filed July 30, 2009 presents remarks and arguments submitted to the office action mailed April 30, 2009 is herein acknowledged.

The rejection of claims 1-10, 12-20 under 35 U.S.C. 103(a) as being unpatentable over Chen (US 6324703 B1) in view of Chung et al. (KR 2002069596 A) is not persuasive. Therefore, the rejection is herewith maintained.

The rejection of claim 11 under 35 U.S.C. 103(a) as being unpatentable over Chen (US 6324703 B1), and Chung et al. (KR 2002069596 A), as applied to claims 1-10, 12-20, and further in view of Lennon et al. (US 2003/0165451—previously presented) is not persuasive. Therefore, the rejection is herewith maintained.

See the rejections below:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10, 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (US 6324703 B1 – previously presented) in view of Chung et al. (KR 2002069596 A— previously presented).

The instant claims are drawn to a climaproof cosmetic complex, which comprises
(i) 0.1 to 90 % by weight of a gelled oil composition consisting of an oil component and

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a polymer component, which is a tri- block copolymer, a star polymer, a radial polymer, a multi-block polymer of polystyrene, polyethylene, polyvinyl chloride, polyisoprene, polybutadiene, an ethylene/butadiene copolymer, an ethylene/propylene copolymer, an ethylene/butadiene copolymer, an ethylene-propylene/diene copolymer, a styrene-ethylene/propylene copolymer, a styrene-ethylene/butadiene copolymer, a styrene-isoprene copolymer, a styrene-butadiene copolymer, a styrene-ethylene/propylene-styrene copolymer, a styrene-ethylene/butadiene-styrene copolymer, a styrene-isoprene-styrene copolymer, a styrene-butadiene-styrene copolymer, or a mixture thereof; (ii) 0.1 to 80 % by weight of a water-repellent cross-linked polyester having a molecular weight of 600 to 8000 and consisting of polyvalent alcohol and dicarbonic acid monomers; (iii) 0.01 to 20 % by weight of a water-absorbing powder having a particle size of 1 to 100 μm , which powder is a natural plant powder rich in cellulose, maltodextrine, starch, a starch/polyacrylate copolymer, a synthetic polymer made from an acrylic monomer or mixtures thereof; (iv) 0.01 to 20 % by weight of a thickening agent; and (v) 0.1 to 50 % by weight of an organic solvent, a carrier substance, or a mixture thereof, wherein said cosmetic complex is water resistant and contains essentially no emulsifier.

Chen teaches "novel gels and gel composites for direct contact with the body and capable of substantially preventing the generation moisture from said body in extreme cold weather use (abstract)." The gel compositions of Chen are made of oil (see Examples II-IV) and 100 parts by weight of at least one or more a linear, multi-arm, branched, or star shaped block copolymer or a mixture thereof, said block copolymer

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having one or more substantially crystalline poly(ethylene) midblock in combination with one or more amorphous midblocks of poly(butylene), poly(ethylene-butylene), poly(ethylene-propylene) or a combination thereof (col 8-9), meeting limitation (i) of claim 1, 2-3, 5, 13, and 19-20. The reference teaches "as an example, thermoplastic polyurethane (TPU) made with diisocyanates and chain extenders such as 2,2,4-trimethyl-1,3-pentanediol (TMPD) and 2-Butyl-2-ethyl-1,3-pentanediol (BEPD) from saturated hydrocarbon diol KLP L-2203 having a hard segment contents of 22% exhibits clean phase separation of the hard and soft segments with a glass transition of -50.degree. C. TPU polyurethane elastomers based on KLP L-2203 diol, MDI with TPM and BEPD chain extenders at 22% hard segment, 104 isocyanate index, and cured at 105.degree. C. gives 2,430 and 1,160 tensile psi, 1040% and 2180% elongation at break, and modulus at 300% elongation of 670 and 290 psi respectively by the one shot method. Polyurethane elastomers prepared by the one shot method based on KLP L-2203, MDI and TMP at 1.04 NCO/OH ratio having hard segment concentrations of 22%, 33% and 44% give tensile of 2430, 2830 and 2760 psi respectively, elongations at break of 1040%, 830%, and 760% respectively, and modulus at 300% elongation of 670, 1160 and 1360 psi respectively. KLP L-2203 (hydroxyl terminated poly(ethylene-butylene) oligomer (50,000 cps at 20.degree. C.) based TPU's can be mixed with the crystalline block copolymers to form soft fluffy crystal gels within the gel rigidity ranges of the invention. The thermoplastic crystalline triblock and multiblock polyurethane elastomers can also be blended by themselves with components II and III to make strong, elastic fluffy gels of the invention (col 23,

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lines 33-56).” “The hydrophilic patches can be made from any moisture adsorbing material capable of absorbing at least 50% of its weight of water. Such hydrophilic materials include, natural materials (cotton) or water absorbing polymers, hydrogen forming polymers, said tolerant super absorbent, starch modified adsorbents polysaccharide (starch or cellulose modified polymers).” “The hydrophilic patches are held in place by the gel on one side and in direct contact with the skin” (col.6 lines 38-55), meeting limitation (iii) of claim 1 and 16 in part. “Plasticizers (II) particularly advantageous for use in practicing the present invention are will known in the art, they include rubber processing oils such as paraffinic and naphthenic petroleum oils, highly refined aromatic-free paraffinic and naphthenic food and technical grade white petroleum mineral oils, and synthetic liquid oligomers of polybutene, polypropene, polyterpene, etc. The synthetic series process oils are high viscosity oligomers which are permanently fluid liquid nonolefins, isoparaffins or paraffins of moderate to high molecular weight,” meeting the limitation of claim 4. The compositions can comprise a silicone gel(col 5, lines 19-20), meeting the limitation of claim 7. The fluffy crystal gels can also contain useful amounts of conventionally employed additives such as stabilizers, antioxidants, antiblocking agents, colorants, fragrances, flame retardants, flavors, other polymers in minor amounts and the like to an extend not affecting or substantially decreasing the desired properties. Such additives include oleyl palmitamide, stearyl stearamide, erucyl stearamide, calcium stearate, other metal stearates, waxes (e.g., polyethylene, polypropylene, microcrystalline, carnauba, paraffin, montan, candelilla, beeswax, ozokerite, ceresine, and the like), teflon (TFE, PTFE, PEA,

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FEP, etc), polysiloxane, etc. the fluffy crystal gel can also contain metallic pigments (aluminum and brass flakes), TiO_2 , mica, and pigments, phosphorescent pigments, aluminatetrihydrate, antimony oxide, iron oxides (Fe_3O_4 , Fe_2O_3 , etc.), iron cobalt oxides, chromium dioxide, iron, barium ferrite, strontium ferrite and other magnetic particle materials, molybdenum, silicones, silicone fluids, lake pigments, aluminates, ceramic pigments, ironblues, ultramarines, phthalocynines, azo pigments, carbon blacks, silicon dioxide, silica, clay, feldspar, barium ferrite, wollastonite and the like (col. 28 lines 45-65), meeting the limitation of cosmetically acceptable substances of claim 8. Open cell gels are made for direct contact to the skin (col 5, lines 10-31). The reference teaches the use of polyester and high molecular weight polycarbonates. Additionally, the components incorporated into the gel are microspheres, hence reading on particles with diameters in the microns. The compositions of Chen are water repellant and do not contain emulsifiers.

The reference fails to teach the specific polyester and amount of water-repellent crosslinked polyester, water-absorbing powders, thickening agents, organic solvents, cross-linked silicone polymer and the amount of the climaproof complex in the cosmetic. Further, the reference fails to teach the specific size of the water-absorbing polymers.

However, Chen teaches that for the block copolymer gels described herein, including insulating gels, insulating gel composition, and fluffy gels, the tensile strength and tear strength are essentially independent properties. For any particular gel, it can exhibit high tensile strength, but weak tear strength, likewise, a gel can exhibit high tear strength, but low tensil strength. The best tensile and tear strength gels are those

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having greater crystallinity and elasticity. The tensile of all block copolymer gels including the crystalline gels can be improved by the addition of (1-15% weight) crystalline and seim-crystalline (V) polymers, such as additions of higher density and higher molecular weight (higher melt index) polyethylene and polypropylene. The tear strength can be improved by additions (1-15% weight) of branched, multiblock, radial, star bock copolymers (with at least 20% weight and block content), polyethylene copolymers, polypropylene copolymers, thermoplastic polyurethane elastomers, polyphenylene oxide, high molecular weight polystyrene, polycarbonate, and the like. Hence, for example 1-10% weight of polypropylene and 1-10% weight of poly(dimethylphenylene)oxide can further improve the tensile and tear strength of the gels of the invention. Likewise combinations of the other polymers described can provide a balanced of better tensile, better tear and better fatigue resistant gel properties. The fluffy crystal gels can also contain useful amounts of conventionally employed additives.

Further, Chung et al. teaches Copolymerized polyester is manufactured by polymerizing dicarbonic acid including terephthalic acid and diol including ethylene glycol, wherein the dicarbonic acid consists of 80-50 mol% of terephthalic acid and/or its ester-forming derivative and 20-50 mol% of di-beta-hydroxy ethylene phthalate and/or its ester-forming derivative; and the diol consists of 100-75 mol% of ethylene glycol and 0-25 mol% of diethylene glycol. (abstract). The polyesters provide thermal adhesive properties.

Therefore, the determination of optimal or workable proportions of the ingredients and size of the water-absorbing polymers by routine experimentation is obvious. One having ordinary skill in the art would have been motivated to do this to obtain the desired balance of better tensile, better tear better fatigue resistant and better feel gel properties. Additionally, the incorporation of the specific polyester claimed is obvious over the prior art. The motivation to incorporate the polyester manufactured by polymerizing dicarbonic acid including terephthalic acid and diol including ethylene glycol is because Chung et al. teaches the polyester provides thermal adhesive properties. Hence, a skilled artisan would have had reasonable expectation of successfully producing a composition with similar efficacy and results.

The limitation "which is a composition for skin protection against weather-related environmental damage" is an intended use and does not receive patentable weight in the composition claim 10.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (US 6324703 B1—previously presented) and Chung et al. (KR 2002069596 A), as applied to claims 1-10, 12-20, and further in view of Lennon et al. (US 2003/0165451—previously presented).

Chen is as applied above.

Although Chen teaches the composition in direct contact to the skin comprising cosmetically acceptable substances (col 5, lines 10-31), the reference fails to specifically teach a foundation, lotion, lipstick, eye shadow, lip gloss, make-up, or rouge.

However, Lennon et al. teaches a similar composition useful for example as a foundation.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the composition of Chen as a foundation. The motivation is because Chen teaches the composition in direct contact to the skin comprising cosmetically acceptable substances and Lennon et al. teaches similar compositions useful in foundations. Therefore, a skilled artisan would have reasonable expectation of successfully producing a cosmetic foundation that is capable of substantially preventing the generation moisture from said body in extreme cold weather use.

Response to Arguments

Applicant's arguments filed July 30, 2009 have been fully considered.

Applicant argues that the Chen et. al. reference is nonanalogous art. Examiner states a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Applicant argues the patches of Chen et al. are not part of the gel composite and they are not part of a cosmetic complex. However, the examiner points to col 6 lines 52-53 wherein the hydrophilic patches are held in place by the gel on one side and in

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direct contact with the skin. The comprising language of the claim in the instant invention is open-ended and does not exclude additional, unrecited elements.

Applicant argues that the gelled oil and water repellant crosslinked polyester are complementary in their properties... the overall effect of which exceeds the individual effect thus providing a synergistic effectiveness." The Examiner's contention is that the Chen reference teaches both components the gel compositions. See rejection above.

Applicant's argument over the claim 11 rejection depends on the validity of the previous arguments which were not found persuasive.

The arguments are not persuasive and the rejection is made **FINAL**.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Layla Soroush whose telephone number is (571)272-

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5008. The examiner can normally be reached on Monday through Friday from 8:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/SREENI PADMANABHAN/

Supervisory Patent Examiner, Art Unit 1627